

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR INDEPENDENT SCHOOL DISTRICT NO. 301

In the Matter of the Proposed
Placement of Ralph M. Berg on
Unrequested Leave Due to
Discontinuance of Position or
Lack of Pupils.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Bruce D. Campbell, Administrative Law Judge from the Minnesota Office of Administrative Hearings, acting as Hearing Officer for Akeley Independent School District No. 301, in Akeley, Minnesota on May 5, 1986 at 1:00 p.m.

Appearances: Ralph T. Smith, Smith, Carpenter, Benshoof & Klein, Attorneys at Law, P.O. Box 1420, Bemidji, Minnesota 56601, appeared on behalf of Akeley Independent School District No. 301 (District); and Roger J. Aronson, Attorney at Law, 1208 First Bank Place West, 120 South 6th Street, Minneapolis, Minnesota 55402, appeared on behalf of Ralph M. Berg, the teacher proposed to be placed on involuntary leave (Mr. Berg).

The record herein closed on May 14, 1986, with the receipt of proposed findings.

Notice is hereby given that, pursuant to Minn. Stat. 125.12, subds. 8 and 9 (1984), this Report is a recommendation only and not a final decision. The School Board of Independent School District No. 301 will make the final decision at a meeting to be held on May 20, 1986, at 8:00 p.m. in the District Offices, located at the Akeley High School, Akeley, Minnesota 56433. Any person desiring additional information concerning the School Board meeting or the manner of presenting exceptions to this Report should contact Michael Kulig, Superintendent, ISD No. 301, Akeley High School, Akeley, Minnesota 56433.

STATEMENT OF ISSUES

The issues for determination in this proceeding are whether cause exists, pursuant to Minn. Stat. 125.12, subd. 6(b) (1984), to reduce the secondary teaching staff of the Akeley Independent School District No. 301 and, if so, whether the placing of Ralph M. Berg, secondary school principal, on unrequested leave of absence is in accordance with Minn. Stat. 125.12, subd. 6(b) (1984).

Based upon all the files, records and proceedings herein, the Hearing Officer makes the following:

FINDINGS OF FACT

1. Independent School District No. 301 includes the area surrounding Akeley, Minnesota. The District has both an elementary and secondary education system and it employs 25 full and part-time teachers. SD Ex. ?I

2. Since the 1980-81 school year, the number of students enrolled in the District's secondary education programs has steadily declined. In the 1980-81 school year, the resident average daily membership for secondary students was 156.71. SD Ex. 1. By the 1984-85 school year, that figure was reduced to 128.80. SD Ex. 1. A secondary school census taken by the District Administration on May 1, 1986 showed a student population of only 119 secondary school students. SD Ex. 3

3. The financial condition of the District, despite maximum school levies, has declined precipitously since 1982. In 1983, the unrestricted balance in the general fund account declined from \$371,608 to \$151,465. SD Ex. 4. In 1984, the balance declined to \$117,334. SD Ex. 5. In 1985, the fund balance was reduced to \$7,846. SD Ex. 6

4. The Minnesota Department of Education recommends that a district maintain a surplus in the fund accounts of 20% of annual expenditures, here, approximately \$180,000.

5. For the 1986 school budget, projected revenues and expenditures were in exact balance at \$899,502. SD Ex. 8; SD Ex. 9.

6. Due to a mistake in the calculation of the 1986 revenue projections reflected in SD Ex. 8 the amount of funds to be received was overstated by \$62,000.

7. In February of 1986, the School Board was apprised of the projected \$62,000 deficit in revenues. Prior to the end of 1985-86 school year, the School Board was apprised of the financial condition of the District and the declining fund balances.

8. On January 9, 1986, the School Board directed the District Superintendent to study ways to reduce costs and increase revenues and to make appropriate recommendations for action. SD Ex. 10.

9. On March 4, 1986, the Superintendent recommended to the Board the discontinuance of the secondary school principal's position and a variety of other economy measures. SD Ex. 11.

10. On March 6, 1986, the Board passed resolutions placing a number of teachers, including Mr. Berg, on unrequested leave of absence for the 1986-87 school year. SD Ex. 12.

11. Mr. Berg is currently employed by the Akeley School District as the secondary school principal with both coaching and teaching duties. He is a tenured teacher with three years of District seniority.

12. Prior to its proposed teacher layoffs, the Board had received notice that state school aids for the 1986-87 school year were projected to be

reduced by \$36,000. The projected decrease in school aids was also a factor in the layoff decisions.

13. On April 8, 1986, the District Superintendent notified the Board that no reduction in state aids would occur. He recommended that the positions previously reduced or eliminated for the 1986-87 school year be reinstated. SD Ex. 13.

14. On April 10, 1986, the Board considered a motion to reduce the secondary school principal's position to a one-half time position. The motion failed. SD Ex. 14. At the same meeting the Board voted to offer Mr. Berg a 112 time position as high school principal and a 2/7 time position as teacher for the 1986-87 school year. SD Ex. 14.

15. On April 29, 1986, at a special meeting of the Board, a successful I vote was taken to make the secondary school principal's position a half time position at a salary of \$13,500.00 for the 1986-87 school year. SD Ex. 15. The Board, at the same meeting, rescinded its motion made on April 10, 1986, to offer Mr. Berg a 112 time position as a school principal and a 2/7 time position as teacher for the 1986-87 school year. SD Ex. 15. The Board authorized the attorney for the District to commence a hearing to place Mr. Berg on an unrequested leave of absence due to the financial conditions of the District. SD Ex. 15.

16. By letter dated March 27, 1986, Mr. Berg was notified of a School Board resolution placing him on unrequested leave of absence for the 1986-87 school year and he was advised of his right to a hearing. SD Ex. 16.

17. By letter dated April 3, 1986, Mr. Berg requested a hearing on the Board's resolution regarding an unrequested leave of absence. SD Ex. 17.

18. By letter dated April 23, 1986, Mr. Berg's attorney received notice of the hearing.

19. Mr. Berg is licensed as an elementary and secondary school principal, a superintendent, a secondary school coach and Mathematics teacher and an elementary and secondary school physical education and health teacher. SD Ex. 20.

20. A tenured principal is protected by the Teacher Tenure Act. Minn. Stat. 125.12, subd. 1 (1984).

21. Mr. Berg's seniority date with the District is August 29, 1983, SD Ex. 21.

22. The Board has retained for the 1986-87 school year three teachers who have licensure that overlaps that of Mr. Berg and who possess less seniority

than he does: Joel B. Lundin; John P. Noga; and Keith H. Barnes. SD Ex. 21.

23. The period to grieve the seniority list by any employee has passed and, for all purposes, SD Ex. 21 is the final teacher seniority list for the District.

24. The three teachers with less seniority than Mr. Berg who have overlapping licensure are probationary teachers who have not obtained tenure with the District.

25. Mr. Lundin's current assignment makes use of his elementary education certification and Mr. Berg is not licensed as an elementary school teacher.

26. Although Mr. Berg has been offered the part-time position of school principal, he has requested that he be given a full-time position with the District within his area of licensure.

27. Mr. Berg is fully licensed to teach, for the 1986-87 school year, the subjects currently scheduled to be taught by John P. Noga and Keith H. Barnes.

28. Both the District Superintendent and its attorney have advised the Board that Mr. Berg is entitled to a full-time position with the District for the 1986-87 school year under Minnesota law.

Based upon the foregoing Findings of Fact, the Hearing Officer makes the following:

CONCLUSIONS

1. Independent School District No. 301 and the Hearing Officer have jurisdiction in this matter pursuant to Minn. Stat. 125.12, subds. 8 and 9 (1984).

2. The District has satisfied all requirements of law or rule and the matter is properly before the Hearing Officer.

3. Mr. Ralph Berg, as a tenured secondary school principal, is protected by the Minnesota Teacher Tenure Act, Minn. Stat. 125.12. Minn. Stat. 125.12, subd. 1 (1984).

4. The District has demonstrated that the reduction of the position of secondary school principal to a one-half time position is necessitated by declining enrollments and financial conditions.

5. The Board, in proposing to place Mr. Berg on unrequested leave of absence for the 1986-87 school year, has not followed Minn. Stat. 125.12, subd. 6(b) (1984). It has retained probationary persons to teach in an area of licensure in which it has placed a tenured teacher on unrequested leave of

absence and it has not placed teachers on unrequested leave of absence in the inverse order of District seniority.

6. Offering Mr. Berg a part-time position as secondary school principal does not satisfy the requirements of Minn. Stat. 125.12, subd. 6(b) (1984).
Walter v. Independent School District No. 457, 323 N.W.2d 37 (Minn. 1982).

7. As a consequence of Conclusions 5 - 6, supra, the placing of Mr. Berg on unrequested leave of absence while retaining several less senior teachers in the area of his licensure violates Minn. Stat. 125.12, subd. 6(b) (1984).

8. Any Finding of Fact more properly considered a Conclusion or any Conclusion more properly considered a Finding of Fact is hereby expressly adopted as such.

Based upon the foregoing Conclusions, the Hearing Officer makes the following:

RECOMMENDATION

It is the recommendation of the Hearing Officer that the Notice placing Mr. Ralph Berg on unrequested leave of absence for the 1986-87 school year be rescinded and that the Board follow Minn. Stat. 125.12, subd. 6(b) (1984), in placing any teachers on unrequested leave of absence to ameliorate adverse financial conditions.

That statute prohibits the retention of teachers less senior than Mr. Berg in areas for which he is licensed for employment with the District during the 1986-87 school year.

Dated this day of May, 1986.

BRUCE D. CAMPBELL
Administrative Law Judge

NOTICE

It is respectfully requested that Independent School District No. 301 provide the Hearing Officer with a copy of its final decision herein,

Reported: jacobson Reporting Services
Center Arcade Building
Bemidji, Minnesota 56601

MEMORANDUM

This proceeding does not involve any factual dispute. In response to mounting economic pressures and declining student enrollments, the District initially decided to place a number of teachers on unrequested leave of absence, pursuant to Minn. Stat. 125.12, subd. 6(b) (1984). When the prospect of reduced state student aids did not materialize, it rescinded all of the resolutions for unrequested leave except that affecting the secondary school principal, Mr. Berg,

Mr. Berg refused to accept a part-time position for the 1986-87 school year. The District has clearly established its entitlement to reduce the number of positions in its secondary school program. it chose to make the

position of high school principal a part-time position. It offered that position to the incumbent teacher, Mr. Berg.

Although the District has clearly established its entitlement to reduce its teaching force, it has not implemented that decision in accordance with Minn. Stat. 125.12, subd. 6(b) (1984). That section, with certain exceptions not here relevant, prevents the retention of a probationary teacher

while a teacher with tenure in the same subject matter is placed on unrequested leave. Moreover, it requires that teachers be placed on unrequested leave in the inverse order of their seniority. As SD Ex. 21 clearly establishes, there are three probationary teachers whose areas of licensure overlap that of Mr. Berg. Mr. Berg could not displace Mr. Joel B.

Lundin, because Mr. Lundin is currently exercising his elementary education licensure, a license not possessed by Mr. Berg. Both John P. Noga, a part-time teacher, and Keith H. Barnes, a secondary school math teacher are probationary teachers whose licensure overlaps that of Mr. Berg. Since Mr. Berg has seniority superior to that of Mr. Barnes and Mr. Noga, under Minn. Stat. 125.12, subd. 6(b) (1984), he is entitled to displace either teacher to attain a full-time position for the 1986-87 school year, unless the offer of a part-time position defeats his rights under the Teacher Tenure Act.

The caselaw clearly establishes that an unrequested leave of absence, whether total or partial, must be made in the inverse order of seniority and that tenured teachers take precedence over probationary teachers with similar

licensure. *Walter v. Independent School District No. 457*, 323 N.W.2d 37 (Minn. 1982).

The motives of the School Board in not following the advice of either the

Superintendent or its attorney and seeking to maximize the number of teachers

employed by the District are understandable. It is difficult to determine that any teacher is to be unemployed. That difficulty, however, does not affect Mr. Berg's right, as a tenured teacher, to a full-time position with the District. Under the Teacher Tenure Act, the School Board may not reduce

his position to part-time status without offering him a full-time position when less senior teachers in his area of licensure are retained.

For all of the reasons previously discussed, the Hearing Officer determines, as did the District Superintendent and the District's attorney, that Mr. Berg may not be placed on unrequested leave of absence or relegated to a part-time position while less senior teachers within his area of licensure are retained. The Hearing Officer makes no recommendation to the District as to how the teaching assignments for the 1986-87 school year should

be readjusted or if any teachers should be placed on unrequested leave of absence. Those decisions are within the sound judgment of the District, acting in accordance with Minn. Stat. 125.12, subd. 6(b) (1984). It cannot, however, consistent with that statute, take the action proposed regarding the

full-time status of Mr. Berg.

B.D.C.

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